

ATTACHMENT

2.1.A. 17 NYCRR PART 15

PART 13**Historical Note**

Part (§§ 13.1-13.8) repealed, new (§§ 13.1-13.11) filed May 16, 1966; repealed, filed March 26, 1974 eff. April 1, 1974.

Sections 13.1-13.8**Historical Note**

Secs. repealed, new filed May 16, 1966; repealed, filed March 29, 1974 eff. April 1, 1974.

13.9-13.11**Historical Note**

Secs. filed May 16, 1966; repealed, filed March 29, 1974 eff. April 1, 1974.

PART 14**Historical Note**

Part (§§ 14.1-14.2) repealed, new (§§ 14.1-14.2) filed May 16, 1966; repealed, filed March 29, 1974 eff. April 1, 1974.

Sections 14.1-14.2**Historical Note**

Secs. repealed, new filed May 16, 1966; repealed, filed March 29, 1974 eff. April 1, 1974.

PART 15

**PROCEDURES FOR IMPLEMENTATION OF
STATE ENVIRONMENTAL QUALITY REVIEW ACT**

(Statutory authority: Environmental Conservation Law, § 8-0113[3])

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Historical Note

Part (§§ 15.1-15.6) repealed, new (§§ 15.1-15.6) filed May 16, 1966; repealed, filed March 29, 1974; new (§§ 15.1-15.10) filed July 27, 1976; repealed, new (§§ 15.1-15.17) filed April 6, 1979 eff. April 15, 1979.

Section 15.1 Purpose and authority. (a) The purpose of this Part is to establish such additional procedures as are necessary for the implementation of the State environmental quality review act (SEQR) by the New York State Department of Transportation. In accordance with the authority contained in section 8-0113, subdivision 3 of ECL and 6 NYCRR 617.4, the procedures contained in this Part vary from those contained in 6 NYCRR Part 617. The purpose of this variance is to allow the department to establish a procedure for SEQR implementation which corresponds with, and is integrated into, procedures for compliance with the National Environmental Policy Act.

(b) Such coordination of procedures is directed by SEQR in section 8-0111 and is consistent with Council on Environmental Quality regulations implementing the National Environmental Policy Act which have an effective date of July 30, 1979 (40 CFR 1500 *et seq.*).

(c) The major differences between this Part and 6 NYCRR Part 617 are:

(1) lead agency determinations are made at an earlier time in the SEQR process; and

(2) all actions which are not type II actions are processed in the same manner (similar to type I under 6 NYCRR Part 617).

(d) These regulations are designed to be no less protective of the environment than 6 NYCRR Part 617.

Historical Note

Sec. repealed, new filed May 16, 1966; repealed, filed March 29, 1974; new filed July 27, 1976; repealed, new filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988.
Amended (c).

15.2 Definitions. Unless the context otherwise requires, the following definitions shall be applicable to this Part:

(a) *Action* means:

(1) a project or physical activity which results in the creation, alteration or new use of a structure, facility or land; and which

(i) is directly undertaken by the department;

(ii) is funded by the department; or

(iii) requires the issuance of a new permit or the modification of an existing permit by the department;

(2) the policy-, regulation- or procedure-making of the department.

(b) *Agency* means any State agency (other than the department) or any local agency which is subject to the requirements of SEQR.

(c) *Applicant* means any person making an application or other request for the provision of funding by the department for an action, for the private sale of land by the department which facilitates the undertaking of a proposed action, or for the issuance of a permit by the department permitting the applicant to undertake an action.

(d) *Coastal area* means the State's coastal waters and the adjacent shorelands, as defined in article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the Office of the Secretary of State, as required by section 914(2) of the Executive Law.

(e) *Commissioner* means the Commissioner of Transportation of the State of New York.

(f) *Critical environmental area* means a specific geographic area designated by a State or local agency, having exceptional or unique characteristics that make the area environmentally important.

(g) *Department* means the Department of Transportation of the State of New York.

(h) *Direct action* means a project or physical activity which results in the creation, alteration or new use of a structure, facility or land which will, upon completion or operation, be under the jurisdiction of the department. *Direct action* also includes the policy-, regulation- and procedure-making of the department.

(i) *DEIS* means a draft environmental impact statement prepared for the purpose of complying with SEQR.

(j) *Environment* means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archaeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

(k) *Environmental assessment* means a public document briefly providing sufficient information and analysis for determining whether the proposed action may or will not have a significant effect on the environment. The environmental assessment may be in the form prescribed in the appendices of 6 NYCRR Part 617, in a form promulgated by the department, in a form which complies with Federal regulations for the implementation of NEPA, or it may be any report prepared under the auspices of the department which provides sufficient information and analysis for the required determination.

(l) *Excluded action* means an action to which the requirements of this Part do not apply. Excluded actions are:

(1) actions undertaken, funded or approved prior to the effective dates set forth in SEQR (see chapters 228 of the Laws of 1976, 252 of the Laws of 1977 and 460 of the Laws of 1978), except:

(i) in the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental effects, or to choose a feasible and less environmentally damaging alternative, and the Commissioner of Environmental Conservation has required the preparation of an environmental impact statement; or

(ii) in the case of an action which is proposed to be modified and the modification may result in a significant adverse effect on the environment, an environmental impact statement shall be prepared with respect to such modification;

(2) actions requiring a certificate of environmental compatibility and public need under article VII or VIII of the Public Service Law and the consideration of, granting or denial of any such certificate;

(3) actions subject to the jurisdiction of the Adirondack Park Agency pursuant to section 809 of the Executive Law, including actions of the Adirondack Park Agency thereunder, and actions subject to the jurisdiction of local governments pursuant to section 808 of the Executive Law and actions of such local governments pursuant thereto.

(m) *Exempt act* means an enforcement or criminal proceeding (or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings), maintenance or repair involving no substantial changes in existing structure or facility, acts which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources, and all other types of acts listed in sections 15.12 and 15.13 of this Part. Exempt acts are not actions within the meaning of this Part.

(n) *Federal DEIS* means a draft environmental impact statement prepared for the purpose of complying with NEPA.

(o) *Federal FEIS* means a final environmental impact statement prepared for the purpose of complying with NEPA.

(p) *FEIS* means a final environmental impact statement prepared for the purpose of complying with SEQR.

(q) *Funding or financial support* means the provision by the department of money or services through contracts, grants, subsidies, loans or other forms of assistance to an applicant for the applicant's use in undertaking a proposed project or physical activity which will result in the creation, alteration or new use of a structure, facility or land which will, upon completion or operation, not be subject to the jurisdiction of the department. Funding itself is not an action within the meaning of this Part.

(r) *Local agency* means any local agency, board, authority, district, commission or governing body, including any city, county and other political subdivision of the State.

(s) *Ministerial act* means an act performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although the law may require in some degree a construction of its language or intent, including all acts listed in section 15.13 of this Part. Ministerial acts are not actions within the meaning of this Part.

(t) *NEPA* means the National Environmental Policy Act.

(u) *Permit* means the grant by the department to an applicant of a lease, license, certificate, grant of permission or other entitlement for use or permission to undertake all or part of a proposed project or physical activity which will result in the creation, alteration or new use of a structure, facility or land which will, upon completion or operation, not be subject to the jurisdiction of the department. Permit-granting includes the private sale of land by the department which facilitates the undertaking of a proposed action. The issuance of a permit itself is not an action within the meaning of this Part.

(v) *Record of decision* means a public document stating the decision of the department and briefly stating the facts and conclusions relied upon in the FEIS or Federal FEIS supporting the department's decision, and indicating the social, economic and other factors and standards which formed the basis for the decision. The record of decision shall also contain specific findings or determinations required by SEQR.

(w) *SEQR* means article 8 of the Environmental Conservation Law, which is also known as the State environmental quality review act.

(x) *Scoping* means the process by which the department identifies the significant issues related to the proposed action which are to be addressed in the DEIS, including, where possible, the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed to minimize or eliminate adverse impacts, and the identification of nonrelevant issues. Scoping is intended to promote the efficiency of the department's review of the DEIS, to provide an applicant with guidance on matters which must be considered, and to provide an opportunity for early involved agency and public awareness of the proposal.

(y) *State agency* means any State department, agency, board, public benefit corporation, public authority or commission.

(z) *Type II action* means any class or type of action which has been determined not to have a significant effect on the environment and which is not subject to this Part. Type II actions include only those actions or classes of actions included in section 15.14 of this Part and those actions or classes of actions included on the type II list of an applicant agency or lead agency, when such list has been promulgated and established pursuant to the requirements of SEQR.

Historical Note

Sec. repealed, new filed May 16, 1966; repealed, filed March 29, 1974; new filed July 27, 1976; repealed, new filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988.

15.3 General rules. (a) All direct actions, funding and permit-issuing of the department shall be fully subject to this Part and the procedures contained in this Part shall be followed, except for:

- (1) exempt acts;
- (2) excluded actions;
- (3) type II actions;

(4) actions which are a part of, and in compliance with, a program for which a determination of no significant effect, an FEIS or Federal FEIS has been prepared.

(b) An FEIS or Federal FEIS is required for all actions, where such action may have a significant effect on the environment and where such direct action, or funding or permitting of such action by the department, is subject to this Part pursuant to subdivision (a) of this section.

(c) With respect to any action for which an FEIS is required or which is the subject of a Federal FEIS, the department shall not:

- (1) commit itself to directly undertake the action;
 - (2) enter into any binding agreement or contract to provide funding for the action;
- or

(3) grant or commit itself to grant a permit for the action, until the department has prepared the record of decision as is required by section 15.9 of this Part.

(d) Where funding or permitting by the department is subject to this Part, the department shall not enter into any binding agreement or contract to provide funding, nor grant or commit itself to grant such permit, whether or not the action is the subject of an FEIS or Federal FEIS, until all requisite fees and costs have been paid.

(e) With respect to capital projects, many of the parts of such projects, if independently carried out, would be considered actions. The entire set of activities constituting the project will be considered the action for the purposes of this Part. If an environmental impact statement is determined to be necessary for such project, the DEIS and FEIS will cover the entire set of activities constituting the project.

Historical Note

Sec. repealed, new filed May 16, 1966; repealed, filed March 29, 1974; new filed July 27, 1979; repealed, new filed April 6, 1979 eff. April 15, 1979.

15.4 Initial determinations. (a) The department shall determine whether its participation in a proposed project or physical activity constitutes a ministerial or exempt act. In such case, the participation of the department in such project or physical activity is not an action subject to this Part.

(b) The department shall determine whether its participation in the project or physical activity constitutes a direct action, funding or permit-granting. The policy-, regulation- and procedure-making of the department shall always constitute a direct action.

(c) If the proposed action is a direct action, the department shall determine whether or not the action is one which is a type II action, as listed in section 15.14 of this Part, and whether or not the action is one which is excluded. Should the proposed action be either type II or excluded, the department shall have no further obligation with respect to this Part for such action. Should such direct action not be type II or excluded, the procedures of section 15.6 of this Part shall apply.

(d) If the proposed action is an action which is funded or permitted, the department shall determine whether or not the action is a type II action, as listed in section 15.14 of this Part, or the type II list of the applicant agency (the applicant must be an agency with a type II list promulgated and established pursuant to the requirements of SEQRA in order to reference the applicant's type II list), and whether or not such action is excluded. Along with any application, proposed or submitted, an applicant shall submit to the department information sufficient for the department to make such determination. Should the proposed action of the applicant be determined to be either type II or excluded, the department shall have no further obligation with respect to this Part for such action. Should such action not be type II or excluded, either:

- (1) the procedures of section 15.7 of this Part shall be followed where the department is the lead agency pursuant to section 15.5 of this Part; or
- (2) the procedures of section 15.8 of this Part shall be followed where the department is not the lead agency pursuant to section 15.5 of this Part.

Historical Note

Sec. repealed, new filed May 16, 1966; repealed, filed March 29, 1974; new filed July 27, 1976; repealed, new filed April 6, 1979 eff. April 15, 1979.

15.5 Lead agency determinations. (a) The department shall be lead agency in the following cases:

- (1) for all proposed direct actions of the department;
- (2) in all cases where the department is requested to fund the proposed action of an applicant, where such proposed action is a capital construction project for which the department will either prepare the project design or directly supervise its preparation, except in such cases where the applicant agency desires to be the lead agency and the department agrees; and
- (3) in all cases where the department is requested to fund or permit the proposed action of an applicant which is not an agency for the purposes of this Part, and where there are no other agencies involved in such proposed action.

(b) The department will not be lead agency in the following cases:

- (1) in all cases where the department is requested to fund or permit a proposed action of an applicant which is an agency for the purposes of this Part, where such proposed action is not a capital construction project for which the department will either prepare the project design or directly supervise its preparation (in these cases the lead agency will be the applicant or any other agency as is mutually agreed upon by the applicant and such other agency);
- (2) in the case where the department is requested to construct, design, fund, permit or otherwise approve proposed transportation facilities or structures that are ancillary to a proposed nontransportation action and where there are one or more other agencies involved having greater overall funding, permit or review responsibility for the proposed action; and
- (3) in the case where the department is requested to permit a proposed nontransportation action and where there are one or more agencies having greater overall funding, permit or review responsibility for the proposed action.

In unusual circumstances, the department may agree to be lead agency where it would not be under the provisions of this subdivision.

(c) In any case not covered by subdivisions (a) and (b) of this section, the lead agency shall be determined between the department and such other agencies as are involved. Criteria contained in 6 NYCRR Part 617 shall be used as a basis for such determination.

(d) A designation of lead agency by the Commissioner of Environmental Conservation, made in accordance with the procedures contained in 6 NYCRR Part 617, shall be determinative of the lead agency regardless of the provisions of subdivisions (a) through (c) of this section.

Historical Note

Sec. repealed, new filed May 16, 1966; repealed, filed March 29, 1974; new filed July 27, 1976; repealed, new filed April 6, 1979 eff. April 15, 1979.

15.6 Procedures for direct actions. (a) Should the proposed direct action of the department not be type II or excluded, the department will either:

- (1) prepare an environmental assessment on the proposed action; or
- (2) commence procedures leading to the preparation of a DEIS or Federal DEIS pursuant to subdivision (c) of this section.

In either case, if the action is in a coastal area, the provisions of 19 NYCRR Part 600 also apply and will be complied with by the department.

(b) If, based upon consideration of the completed environmental assessment and the criteria contained in section 15.11 of this Part, the department determines that its proposed direct action will not have a significant effect on the environment, the department shall prepare a formal determination to such effect and file it in accordance with section 15.10 of this Part. Upon such filing, the department may undertake such action and shall have no further obligation with respect to this Part.

(c) If, based upon its consideration of the environmental assessment, and the criteria contained in section 15.11 of this Part, the department determines that its proposed direct action may have a significant effect on the environment, the following shall apply:

(1) If the proposed direct action of the department is subject to the requirements of NEPA, the department shall follow the procedures for compliance with NEPA for major Federal actions significantly affecting the quality of the human environment, which procedures will result in the preparation of a Federal FEIS. Upon the completion of the Federal FEIS, the department shall have no further obligation with respect to this Part, provided that the department has:

- (i) given consideration to the Federal FEIS; and
- (ii) prepared a record of decision in accordance with section 15.9 of this Part.

(2) If the proposed direct action of the department is not subject to the requirements of NEPA for major Federal actions significantly affecting the quality of the human environment, the department shall prepare a formal determination that the proposed direct action may have a significant effect on the environment and file such determination in accordance with section 15.10 of this Part. Upon the filing of such determination, the department shall undertake such scoping as is necessary and commence preparation of the DEIS in accordance with section 15.15 of this Part for the proposed direct action and follow the procedures contained in subdivision (d) of this section.

(d) (1) Upon completion of the DEIS, the department shall prepare a notice of completion of the DEIS and shall file such notice and the DEIS, all in accordance with section 15.10 of this Part.

(2) In addition, the department shall determine whether or not to hold a hearing on the proposed direct action based upon the degree of interest shown by other persons and the extent to which a hearing can aid in the department's decisionmaking process

by providing a forum for, or an efficient mechanism for the collection of, public comment. Should the department determine that a hearing should be held, it shall prepare, file and publish such notice in accordance with section 15.10 of this Part and hold such hearing.

(3) A minimum commenting period of 30 days is required for all DEIS's.

(4) If, upon consideration of the DEIS, comments received thereon and the transcript of any hearing held, the department determines that the proposed direct action will not have a significant effect on the environment, the department shall prepare a formal determination to such effect and file it in accordance with section 15.10 of this Part. Upon such filing, the department may undertake such action and shall have no further obligation with respect to this Part.

(e) If, upon consideration of the DEIS, comments received thereon and the transcript of any hearing held, the department determines that the proposed direct action may have significant effect on the environment, the department shall prepare an FEIS in accordance with section 15.15 of this Part for the proposed direct action. No specific time limit is required for FEIS preparation, except that the department shall prepare the FEIS in as short a time as is possible for the preparation of an adequate FEIS.

(f) Upon completion of the FEIS for the proposed direct action of the department, the department shall prepare a notice of completion of the FEIS and shall file such notice and the FEIS, all in accordance with section 15.10 of this Part.

(g) A minimum commenting period of 10 days is required for all FEIS's.

(h) After the conclusion of the commenting period on the FEIS for the department's proposed action, the department may undertake such action, provided that the department has:

(1) given consideration to the FEIS; and

(2) prepared a record of decision in accordance with section 15.9 of this Part.

Historical Note

Sec. repealed, new filed May 16, 1966; repealed, filed March 29, 1974; new filed July 27, 1976; repealed, new filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988.
Amended (a), (c).

15.7 Procedures for funding and permit-granting where the department is the lead agency. (a) Should the proposed action of the applicant not be type II or excluded, the department will either:

(1) prepare an environmental assessment on the applicant's proposed action;

(2) request the applicant to prepare an environmental assessment on its proposed action; or

(3) commence procedures leading to the preparation of a DEIS or Federal DEIS pursuant to subdivision (c) of this section.

In any case, if the action is in a coastal area, the provisions of 19 NYCRR Part 600 may also apply and will, if applicable, be complied with by the department.

(b) If, based upon consideration of the completed environmental assessment and the criteria contained in section 15.11 of this Part, the department determines that the proposed action of the applicant will not have a significant effect on the environment, the department shall prepare a formal determination to such effect and file it in accordance with section 15.10 of this Part. Upon such filing, the department may fund such action or grant such permit, as the case may be, and shall have no further obligation with respect to this Part.

(c) If, based upon its consideration of the environmental assessment, and the criteria contained in section 15.11 of this Part, the department determines that the proposed action of the applicant may have a significant effect on the environment, the following shall apply:

(1) If the proposed action of the applicant is subject to the requirements of NEPA, the department shall follow those procedures necessary for its compliance with NEPA for major Federal actions significantly affecting the quality of the human environment. Upon completion of the Federal FEIS by the department or Federal agency as is appropriate under NEPA implementing regulations, the department shall have no further obligation with respect to this Part, provided that the department has:

- (i) given consideration to the Federal FEIS; and
- (ii) prepared a record of decision in accordance with section 15.9 of this Part.

(2) If the proposed action of the applicant is not subject to the requirements of NEPA for major Federal actions significantly affecting the quality of the human environment, the department shall prepare a formal determination that the proposed action of the applicant may have a significant effect on the environment and file such determination in accordance with section 15.10 of this Part.

(d) Upon the filing of a determination by the department that the proposed action of the applicant may have a significant effect on the environment, a DEIS shall be prepared. The department, with the cooperation of the applicant, shall undertake such scoping as is necessary. Where the department will either prepare or directly supervise the preparation of the design for the capital construction project of the applicant, the department shall prepare the DEIS unless the applicant desires to prepare the DEIS and the department agrees. In all other cases, the department shall notify the applicant to commence preparation of the DEIS in accordance with section 15.15 of this Part. Should the applicant decide not to prepare the DEIS, the department shall terminate its review of the applicant's proposed action. Under unusual circumstances, the department may prepare the DEIS for the applicant.

(e) When the applicant prepares the DEIS, the department shall review it and determine whether to accept it as satisfactory with respect to its scope, content and adequacy. Should the DEIS be acceptable, the department shall so notify the applicant. Should the DEIS submitted by the applicant not be acceptable, the department shall so notify the applicant and specify the deficiencies which render the DEIS inadequate. An applicant shall be given adequate time to cure any such deficiencies.

(f) (1) Upon the submission of an adequate DEIS by the applicant or the completion of the DEIS by the department, the department shall prepare a notice of completion of the DEIS and shall file such notice and the DEIS, all in accordance with section 15.10 of this Part.

(2) In addition, the department shall determine whether or not to hold a hearing on the proposed action of the applicant, based upon the degree of interest shown by other persons and the extent to which a hearing can aid in the department's decisionmaking process by providing a forum for, or an efficient mechanism for the collection of, public comment. Should the department determine that a hearing should be held, it shall prepare, file and publish such notice, in accordance with section 15.10 of this Part, and hold such hearing.

(3) A minimum commenting period of 30 days is required for all DEIS's.

(4) If, upon consideration of the DEIS, comments received thereon and the transcript of any hearing held, the department determines that the proposed action of the applicant is one which will not have a significant effect on the environment, the department shall prepare a formal determination to such effect and file it in accordance with section 15.10 of this Part. Upon such filing, the department may fund such action or grant such permit, as the case may be, and shall have no further obligation with respect to this Part.

(g) If upon consideration of the DEIS, comments received thereon and the transcript of any hearing held, the department determines that the proposed action of the applicant is one which may have a significant effect on the environment, the department shall prepare the FEIS in accordance with section 15.15 of this Part for the applicant's proposed action. The department may require the applicant to provide such additional information and/or analysis as is necessary for the department to prepare the FEIS. No specific time limit is required for FEIS preparation, except that the department shall prepare the FEIS in as short a time as is possible for the preparation of an adequate FEIS.

(h) Upon completion of the FEIS for the proposed action of the applicant, the department shall prepare a notice of completion of the FEIS and shall file such notice and the FEIS, all in accordance with section 15.10 of this Part.

(i) A minimum commenting period of 10 days is required for all FEIS's.

(j) After the conclusion of the commenting period on the FEIS for the proposed action of the applicant, the department may fund such action or grant such permit, as the case may be, provided that the department has:

(1) given consideration to the FEIS; and

(2) prepared a record of decision in accordance with section 15.9 of this Part.

Historical Note

Sec. filed July 27, 1976; repealed, new filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988. Amended (a), (b), (d), (e), (j).

15.8 Procedures for funding and permit-granting where the department is not the lead agency. (a) Where the department is notified by the lead agency that it has determined that the proposed action of the applicant is either type II or excluded, or has been determined by the lead agency to be an action which will not have a significant effect on the environment, the department may fund such action or grant such permit, as the case may be, and shall have no further obligation with respect to this Part. In the case of an action in a coastal area, the provisions of 19 NYCRR Part 600 may also apply and will, if applicable, be complied with by the department.

(b) Where the department is notified by the lead agency that the action is a major Federal action significantly affecting the quality of the human environment subject to the requirements of NEPA, the department shall follow those procedures necessary for its compliance with NEPA. Upon completion of the Federal FEIS, the department may fund such action or grant such permit, as the case may be, and shall have no further obligation with respect to this Part, provided that the department has:

(1) given consideration to the Federal FEIS; and

(2) prepared a record of decision in accordance with section 15.9 of this Part.

(c) Where the department is notified by the lead agency that it has determined that the proposed action of the applicant may have a significant effect on the environment and a Federal FEIS is not being prepared, the obligation of the department shall be to review and comment upon the DEIS. Upon the submission to the department by the lead agency of the FEIS for the proposed action of the applicant, the department may fund such action or grant such permit, as the case may be, provided that the department has:

- (1) given consideration to the FEIS; and
- (2) prepared a record of decision in accordance with section 15.9 of this Part.

Historical Note

Sec. filed July 27, 1976; repealed, new filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988. Amended (a).

15.9 Record of decision. (a) When the department decides to directly undertake an action or to fund or permit the action of an applicant, where such action has been the subject of an FEIS or Federal FEIS, the department shall prepare a record of decision. The record of decision shall contain the following:

- (1) the decision of the department with respect to the proposed action;
- (2) the following findings:
 - (i) the requirements of section 8-0109 of the Environmental Conservation Law have been met;
 - (ii) consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action to be directly undertaken, funded or permitted by the department is an alternative which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the environmental impact statement;
 - (iii) consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided; and
 - (iv) if the action is in a coastal area, either that the action is consistent with applicable policies set forth in 19 NYCRR 600.5 or, if there is an approved local government waterfront revitalization program, that the action is consistent to the maximum extent practicable with that program; and
- (3) a statement of the facts and conclusions relied upon in the FEIS or Federal FEIS supporting its decision, and indicating the social and economic and other factors and standards which formed the basis for the decision.

(b) In the case where a Federal FEIS has been prepared and the department has jointly, with a Federal agency responsible for NEPA compliance, prepared a record of decision for the purposes of complying with 40 CFR 1505.2 (effective July 30, 1979), such record of decision, if adopted by the department, may be in lieu of and satisfy the requirement of subdivision (a) of this section.

(c) A copy of the record of decision shall be maintained in the department's files and shall be sent to all involved agencies and, where appropriate, to the applicant.

Historical Note

Sec. filed July 27, 1976; amd. filed Aug. 25, 1976; repealed, new filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988. Added (a)(2)(iv), amended (c).

15.10 Notice and filing requirements. The content, filing and publication of the notices required by this Part shall be as follows.

(a) *Determination of no significant effect.* (1) The notice of the determination of no significant effect shall contain:

(i) a statement that it is a negative declaration for the purposes of article 8 of the Environmental Conservation Law;

(ii) a statement that the department (as lead agency) has determined that the proposed direct action of the department, or the action the department proposes to fund or permit, will not have a significant effect on the environment;

(iii) the name, address and telephone number of the department employee who can provide additional information with respect to the subject action;

(iv) a brief description of the nature, extent and location of the subject action; and

(v) a brief statement of the reasons supporting the determination.

(2) The notice of determination of no significant effect shall be filed as follows:

(i) with the main office of the department, which will maintain a central file of all such determinations;

(ii) if the action constitutes a capital project or physical activity, with the regional office of the department in which region the action is located;

(iii) with the Commissioner of Environmental Conservation at 50 Wolf Road, Albany, NY 12233;

(iv) if the action constitutes a capital project or physical activity, with the regional office of the Department of Environmental Conservation in which region the action is located;

(v) if the action constitutes a capital project or physical activity, with the chief executive officer of the appropriate political subdivision in which the action is located;

(vi) if the action involves an applicant, with the applicant; and

(vii) if other agencies are involved in the funding or permitting of the action, with such other agencies.

(b) *Determination that a proposed action may have a significant effect.* (1) The notice of the determination that a proposed action may have a significant effect on the environment shall contain:

(i) a statement that it is a positive declaration for the purposes of article 8 of the Environmental Conservation Law;

(ii) a statement that the department (as lead agency) has determined that the proposed direct action of the department, or the action the department proposes to fund or permit, may have a significant effect on the environment;

(iii) a statement that a DEIS will be prepared;

(iv) the name, address and telephone number of the department employee who can provide additional information with respect to the subject action;

(v) a brief description of the nature, extent and location of the subject action; and

(vi) a brief description of the possible significant effects which have been identified.

(2) The notice of determination that a proposed action may have a significant effect on the environment shall be filed in the manner prescribed in subdivision (a) of this section.

(c) *Notice of completion of DEIS.* (1) The notice of completion of the DEIS shall contain:

- (i) a statement that it is a notice of completion of a DEIS;
- (ii) a statement that the department is the lead agency;
- (iii) the name, address and telephone number of the department employee who can provide additional information with respect to the subject action;
- (iv) a brief description of the nature, extent and location of the subject action;
- (v) a brief description of the possible significant effects which have been identified within the DEIS;
- (vi) a statement indicating where and how copies of the DEIS may be obtained from the department;
- (vii) a statement that comments on the DEIS are requested, and will be received and considered by the department for a period of not less than 30 days from the date of first filing of the notice, or not less than 10 days after the close of any hearing held to consider the DEIS, whichever shall occur last; and
- (viii) the address to which comments should be sent.

(2) The notice of completion of DEIS shall be filed in the same manner prescribed in subdivision (a) of this section. A copy of the DEIS shall be filed with each notice. In addition, the DEIS shall be made available to persons requesting it.

(3) A copy of the notice of completion of DEIS and the DEIS shall be sent to the Secretary of State for any action in a coastal area.

(d) *Notice of hearing.* (1) A notice of hearing shall contain the following:

- (i) the time, place and purpose of the hearing; and
- (ii) a summary of information contained in the notice of completion of the DEIS.

(2) A notice of hearing and a notice of completion of the DEIS may be combined into one document.

(3) The notice of hearing shall be filed in the same manner prescribed in subdivision (a) of this section.

(4) The notice of hearing shall be published, at least 14 calendar days in advance of the hearing, in a newspaper of general circulation in the area of potential impacts and effects of the proposed action.

(e) *Notice of completion of FEIS.* (1) The notice of completion of the FEIS shall contain the following:

- (i) a statement that it is a notice of completion of an FEIS;
- (ii) a statement that the department is the lead agency;
- (iii) a brief description of the nature, extent and location of the subject action;
- (iv) a brief description of the possible significant effects of the subject action; and
- (v) a statement indicating where and how copies of the FEIS may be obtained from the department.

(2) The notice of the completion of FEIS shall be filed in the same manner as is prescribed in subdivision (a) of this section. A copy of the FEIS shall be filed with each notice and made available to persons requesting it.

(f) *Subsequent notice for negative declarations.* Any notice required by law or regulation to be filed or published by the department, which relates to a proposed action for which the department has filed a determination of no significant effect, shall contain a statement that such determination has been made.

Historical Note

Sec. filed July 27, 1976; repealed, new filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988.

15.11 Criteria for determining whether an action may have a significant effect on the environment. (a) An action may have a significant effect on the environment when the action can reasonably be expected to have one or more of the following effects:

(1) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

(2) the removal or destruction of large quantities of vegetation or fauna; the substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse effects on a threatened or endangered species of animal or plant or the habitat of such a species; or other significant adverse effects to natural resources;

(3) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

(4) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

(5) the impairment of the character or quality of important historical, archaeological, architectural or aesthetic resources or of existing community or neighborhood character;

(6) a major change in the use of either the quantity or type of energy;

(7) the creation of a hazard to human health;

(8) a substantial change in the use, or intensity of use, of land, including agricultural, open spaces or recreational resources, or in its capacity to support existing uses;

(9) the creation of a material demand for other actions which would result in one of the above consequences;

(10) changes in two or more elements of the environment, no one of which has a significant effect on the environment, but when considered together result in a substantial adverse impact on the environment;

(11) two or more related actions directly undertaken, funded or permitted by the department, none of which has or would have a significant effect on the environment, but when considered cumulatively would meet one or more of the criteria in this section.

(b) For the purpose of determining whether an action will cause one of the foregoing consequences, the department will consider reasonably related long-term, short-term and cumulative effects, including other simultaneous or subsequent actions which are:

- (1) included in any long-range plan of which the action under consideration is a part;
- (2) likely to be undertaken as a result thereof; or
- (3) dependent thereon.

(c) The significance of a likely consequence (that is, whether it is material, substantial, large or important) should be assessed in connection with:

- (1) its setting (*e.g.*, urban or rural);
- (2) its probability of occurrence;
- (3) its duration;
- (4) its irreversibility;
- (5) its geographic scope;
- (6) its magnitude; and
- (7) the number of people affected.

Historical Note

Sec. filed April 6, 1979; amd. filed Dec. 18,
1987 eff. Jan. 6, 1988.

15.12 Exempt acts. The following acts have been determined to be exempt acts and are therefore not subject to the requirements of SEQR or this Part:

(a) Any act, decision or commitment required to be made within a specific time limit set by Federal law, rule, regulation, or set by other federally imposed requirement, where such time limit renders impact statement analysis impossible.

(b) All rehabilitation, maintenance and repair activities undertaken, funded or permitted by the department, involving no substantial changes in existing facilities, structures or equipment.

(c) The acquisition and use of equipment used to rehabilitate, maintain or repair existing transportation facilities, structures or equipment.

(d) All highway maintenance activities, including but not limited to:

- (1) pavement maintenance;
- (2) shoulder maintenance;
- (3) roadside maintenance;
- (4) maintenance of drainage systems;
- (5) maintenance of stream channels;
- (6) maintenance of bridges, including painting or repair by contract;
- (7) snow and ice control;
- (8) equipment maintenance;
- (9) rest area maintenance;
- (10) maintenance of traffic control;
- (11) maintenance of pavement markings; and
- (12) the execution of agreements for the maintenance of arterials.

- (e) All waterways maintenance activities, including but not limited to:
 - (1) repair and replacement of riprap, concrete and bank protection;
 - (2) shore maintenance;
 - (3) all activities designed to prevent or halt leaks in the canal system; and
 - (4) excavating silt refill to restore channels to design dimensions, and removal of other debris from existing channels.
- (f) Actions necessitated by emergencies, including but not limited to:
 - (1) cleanup of flood and storm damage;
 - (2) emergency local assistance;
 - (3) accident cleanup; and
 - (4) removal of ice jams.
- (g) All ministerial acts, including those listed in section 15.3 of this Part.
- (h) All suspensions or revocations of certificates or permits or other enforcement actions, after regulatory investigatory proceeding, for failure to comply with any provision of the Transportation Law or rule, regulation or order of the commissioner.

Historical Note

Sec. filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988. Amended (f).

15.13 Ministerial acts. The following acts have been determined to be ministerial acts, and are therefore not subject to the requirements of SEQR or this Part:

- (a) The control of outdoor advertising, pursuant to section 88 of the Highway Law.
- (b) The control and removal of junkyards, pursuant to section 89 of the Highway Law.
- (c) Issuance of grade crossing elimination orders by the commissioner, pursuant to section 222 of the Transportation Law, and the funding or undertaking of a grade crossing elimination project pursuant to such order of the commissioner.
- (d) Issuance of alteration or rehabilitation orders for existing grade crossings by the commissioner, pursuant to section 91 of the Railroad Law, and the funding or undertaking of an alteration or rehabilitation project pursuant to such order of the commissioner.
- (e) Maintaining and updating a manual specifying a uniform system of traffic control devices, pursuant to section 1680 of the Vehicle and Traffic Law.
- (f) Issuing permits for the provision of access to non-access-controlled State highways, pursuant to section 52 of the Highway Law.
- (g) The inspection of vehicles used in the transport of passengers for hire and vehicles used to transport children to and from school, pursuant to section 140, subdivision 2, of the Transportation Law.
- (h) The inspection of motor trucks to insure compliance with safety requirements, pursuant to section 140, subdivision 2, of the Transportation Law.
- (i) The inspection of railroad track, facilities and equipment to insure compliance with safety requirements, pursuant to sections 96 and 115 of the Transportation Law and section 69 of the Railroad Law.
- (j) The issuance of official orders, by the commissioner, for the discontinuance of maintenance and transfer of jurisdiction of State highways, pursuant to sections 62 and 63 of the Highway Law.

(k) Private airport compliance determinations, pursuant to section 249 of the General Business Law.

(l) The Mass Transit Operating Assistance Program, pursuant to sections 18-a and 18-b of the Transportation Law.

Historical Note

Sec. filed April 6, 1979; amd. filed Dec. 18,
1987 eff. Jan. 6, 1988.

15.14 Type II actions. (a) Actions which are type II are actions or classes of actions which have been determined not to have a significant effect on the environment and do not require the preparation of an FEIS, DEIS or any determinations or statements pursuant to this Part.

(b) With respect to capital projects, many activities which have, and might have, been listed in this Part as type II actions are the components of a project. The entire set of activities will be considered the "action" for the purpose of the type II determination.

(c) If a "total" capital project or physical activity consists of two or more interdependent and associated actions (each depends upon the completion of the others for its successful implementation and operation), each of which is an action within the meaning of this Part, then the "total" project must be treated as one action subject to this Part. In such cases, the total project is type II only if all the interdependent actions are also type II actions under this Part.

(d) For some of the actions listed in subdivision (e) of this section, the satisfaction of one or more of the following criteria is a prerequisite to their classification as type II. If no criteria are specified for the action, it is type II as stated. The criteria are:

(1) no acquisition of any occupied dwelling units or principal structures of businesses;

(2) no significant changes in passenger or vehicle traffic volume, vehicle mix, local travel patterns or access (other than changes that would occur without the action);

(3) no more than minor social, economic or environmental effects upon occupied dwelling units, businesses, abutting properties or other established human activities;

(4) no significant inconsistency with current plans or goals that have been adopted by local government bodies;

(5) no physical alteration of more than 2.5 acres of publicly owned or operated parkland, recreation area or designated open space;

(6) no effect on any district, site, building, structure or object that is listed, or may be eligible for listing, on the National Register of Historic Places, or any historic building, structure, site or prehistoric site that has been proposed by the Committee on the Registers for consideration by the New York State Board of Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in said National Register;

(7) no more than minor alteration of, or adverse effect upon, any property, protected area, or natural or man-made resource of national, State or local significance, including but not limited to:

(i) freshwater or tidal wetlands and associated areas;

(ii) floodplain areas;

- (iii) prime or unique agricultural land;
- (iv) agricultural districts so designated pursuant to article 25, section 203, when more than one acre of such district may be affected;
- (v) water resources, including lakes, reservoirs, rivers, streams;
- (vi) water supply sources;
- (vii) designated wild, scenic and recreational rivers;
- (viii) unique ecological, natural wooded or scenic areas;
- (ix) rare, endangered or threatened species formally designated as such pursuant to Federal law; and
- (x) any area officially designated as a critical environmental area pursuant to 6 NYCRR Part 617; and
- (8) no requirement for an indirect source air quality permit, pursuant to 6 NYCRR Part 203.

(e) The following classes of actions have been determined by the department to be type II. For reference purposes, the department's usual involvement in the action is provided in parentheses.

GENERAL AND MULTI-MODAL

- (1) (Funding or permit granting). Any action listed as type II by another agency in that agency's duly adopted type II list, when such action is the subject of an application to the department by such agency for funding or permit approval.
- (2) (Funding or permit granting). Any action listed as type II by a lead SEQR agency in such agency's duly adopted type II list, when such action is the subject of an application to the department for funding or permit approval.
- (3) (Permit granting or renewal). The continuation of presently existing permitted conditions or permitted activities without significant change.
- (4) (Permit granting). (i) The use of State-owned property involving highway right-of-way or land held for canal purposes, where the use of the land in its existing state will be continued.
- (ii) Minor work activities within State highway right-of-way.
- (iii) Special hauling.
- (iv) Installation of signals or signs by others on State highway right-of-way.
- (5) (Permit granting). The use of State-owned property pursuant to a lease or permit which continues the use of the land and/or structures in their present condition.
- (6) (Direct action or permit granting). Minor temporary uses of land having negligible or no permanent effect on the environment.
- (7) (Direct action). The sale or disposal by public auction of buildings and/or property which has been determined to be surplus to transportation needs, provided that paragraph (d)(6) of this section is not violated.
- (8) (Direct action). The private sale to a current occupant of buildings and/or property which has been determined to be surplus to transportation needs.
- (9) (Direct action). Sale of surplus property other than land, radioactive materials, pesticides, herbicides or other hazardous materials.

(10) (Direct action or funding). The acquisition and use of transportation fleet, safety or maintenance vehicles or equipment, or the replacement, rehabilitation or conversion of same, including aircraft, buses, trains, trucks and the like, when such vehicles or equipment would be used in undertaking exempt acts or type II actions.

(11) (Direct action or funding). The acquisition and operation of transportation fleet, equipment and parts used to replace, rehabilitate or convert existing equipment.

(12) (Direct action or funding). The acquisition, installation or operation of traffic signal equipment and systems and other operational improvements within existing highway, railroad and waterway rights-of-way.

(13) (Direct action or funding). The acquisition and use of communications equipment.

(14) (Direct action or funding). Any action that rebuilds or restores a previously existing transportation facility or structure, at its prior site, where the prior size and usage of such facility will not be significantly exceeded, where the property involved has not been developed or converted to other uses and where paragraph (3) of subdivision (d) of this section is not violated.

(15) (Direct action or funding). Replacement or reconstruction in kind and function of existing transportation buildings or terminals (including maintenance buildings, garages and the like) at existing sites and not involving real estate acquisition, and provided that paragraphs (5) through (8) of subdivision (d) of this section are not violated.

(16) (Direct action or funding). The expansion, reconstruction, rehabilitation or replacement, at existing sites, of existing transportation maintenance areas, sites, buildings, facilities or equipment, not involving the acquisition of real estate, and provided that paragraphs (5) through (8) of subdivision (d) of this section are not violated; or, if real estate acquisition is involved, provided that any expansion is less than 50 percent of existing site area or building floor area and provided that none of the criteria listed in subdivision (d) of this section is violated.

(17) (Funding). The expansion, reconstruction, rehabilitation or replacement, at existing sites, of existing public transportation passenger terminal buildings (air, rail, bus, ferry, port, etc.) involving an expansion by less than 50 percent of existing site area or building floor area, and provided that none of the criteria listed in subdivision (d) of this section is violated.

(18) (Direct action or funding). Minor alterations to existing structures or equipment within existing property boundaries for transportation safety or operational purposes.

(19) (Direct action). The expansion of an existing highway or waterway maintenance site by less than 50 percent of current size or usage, provided that none of the criteria listed in subdivision (d) of this section is violated.

(20) (Direct action or funding). The construction of new transportation buildings, terminals or stations within the boundaries of property already owned or used for transportation purposes, provided that the project would:

- (i) not involve the physical alteration of 10 or more acres of land;
- (ii) not use ground or surface water in excess of two million gallons per day;
- (iii) not exceed 100 feet above original ground level in a locality without any zoning regulation pertaining to height; and

(iv) not violate any of paragraphs (5) through (8) of subdivision (d) of this section.

(21) (Direct action or funding). Installation of fencing to secure transportation properties or to prevent inadvertent entry of transportation right-of-way.

(22) (Direct action or funding). The construction or reconstruction of bikeways, walkways, pedestrian bridges and the like, where no more than minor amounts of right-of-way need be acquired, provided that paragraphs (5) through (7) of subdivision (d) of this section are not violated.

(23) (Direct action or funding). Replacement, reconstruction or rehabilitation of existing highway/railroad crossings and crossing bridges at present sites not involving significant expansion, and provided that none of the criteria listed in subdivision (d) of this section is violated.

M (24) (Direct action). All activities within the existing boundaries of a highway or waterway maintenance site, other than construction of new buildings or expansion of buildings, provided that paragraph (7) of subdivision (d) of this section is not violated.

(25) (Direct action or funding). The establishment and operation of security or safety practices and activities, not involving construction, within existing transportation facilities or structures.

(26) (Funding or permit granting). The expansion or reduction, by less than 50 percent, of existing levels of service or operations of existing passenger or freight public transportation, on or within existing travel routes or paths.

(27) (Funding). The maintenance of existing levels of service by railroads, bus lines, motor carriers or other operators of transportation services, or the expansion of such services by less than 50 percent.

(28) (Funding). All nonconstruction actions for the purpose of maintaining existing levels or patterns of public transportation services or operations, or to restore such services or operations to previously existing levels or patterns, or to prevent abandonment or discontinuance of existing services.

(29) (Permit grant). Acceptance, rejection, approval or denial by the commissioner or his duly authorized agent of:

(i) tariffs and/or amendments thereto;

(ii) contract carriage contracts;

(iii) schedules of minimum charges;

(iv) operating agreements;

(v) leases or conveyances of operating authority or lines;

(vi) issuance of indebtedness;

(vii) reorganizations, mergers, acquisitions or transfers of operating authority, franchises or stocks; and

(viii) self-insurance funding provisions and regular insurance agreements.

(30) (Direct action or funding). All physical inventories and monitoring conducted solely to inventory existing conditions or operations, including but not limited to: traffic counting, soil sampling, surveys, photologging, aerial photography, operations monitoring and the like.

(31) (Policy, regulation and procedure making). The establishment and implementation of policies, regulations, procedures and the like, for the purpose of the routine administration, coordination, review and management activities of the department.

(32) (Policy, regulation and procedure making). All policy, regulation and procedure making of the department which relates exclusively to type II or exempt acts.

(33) (Policy and regulation making). The establishment of:

(i) quality standards for engineering materials in accordance with accepted engineering practice; and

(ii) equipment construction standards for school buses.

(34) (Policy, regulation and procedure making). Preparing, maintaining and updating manuals, directives, procedures, guidelines and the like which do not commit the department to undertake new capital programs, which do not involve a major reordering of priorities and which meet all the conditions stated in paragraph (36) of this subdivision.

(35) (Procedure making). The preparation and adoption of minor revisions to the department's Environmental Action Plan, pursuant to Federal requirements.

(36) (Policy, regulation and procedure making). Any policy, regulation, procedure making and other similar activities of the department, including the updating of same, provided that such actions:

(i) do not significantly reduce the extent to which the department identifies, considers and documents the social, economic and environmental effects of actions subject to this Part, or the extent to which the department provides for public and agency participation and review of its actions;

(ii) do not significantly expand the number of types or classes of actions, subject to this Part, for which an environmental assessment and determination of effect is not required; and

(iii) do not precipitate or allow changes to standard department operations or practices that may significantly affect the environment.

HIGHWAYS

(37) (Direct action or funding). All highway and associated construction projects which do not violate any of the criteria contained in subdivision (d) of this section and which are of a scale and scope illustrated by the following:

(i) minor improvements to existing highways, such as adding or widening shoulders, adding auxiliary lanes for weaving, climbing, turning or speed change, or correction of substandard intersections;

(ii) installation on existing highways of traffic control devices, surveillance systems, pavement markings, lighting, signs, other similar operational improvements;

(iii) safety improvements to existing highways such as removal, relocation or shielding of roadside obstacles, grooving, installation of impact attenuators, guide rails, at-grade protective devices, fencing, glare screening, etc.;

(iv) replacement reconstruction or rehabilitation, at present sites or immediately adjacent thereto, of existing bridges, culverts or other transportation structures, including railroad crossing structures, not involving substantial expansion of the structure;

(v) minor reconstruction or rehabilitation of existing highways within existing right-of-way, or involving minimal right-of-way acquisition;

(vi) aesthetic or user convenience improvements to existing highways, such as landscaping, removal of nonconforming outdoor advertising, screening of junkyards and improvements at existing rest areas;

(vii) resurfacing or spot correction of deteriorated facilities or structures;

(viii) minor expansion or alteration of an existing highway maintenance site or structure;

(ix) construction of bus shelters and bays, construction of bicycle or pedestrian facilities within existing right-of-way; and

(x) other projects of a minor scale and scope that meet all of the criteria listed in subdivision (d) of this section.

(38) (Direct action or funding). The construction of new parking areas for fewer than 250 automobiles, or the expansion of an existing parking area by fewer than 250 automobile spaces, provided that no occupied dwelling units or principal structures of businesses are acquired and that paragraphs (5) through (8) of subdivision (d) of this section are not violated.

(39) (Direct action or funding). The construction and operation of new exclusive or preferential bus or high-occupancy-vehicle lanes and ramps within existing transportation rights-of-way, not involving any significant restriction on existing vehicular travel.

(40) (Direct action or funding). The establishment, installation and/or operation of the following:

(i) ramp metering;

(ii) traffic channelization;

(iii) reversible and contra-flow lanes;

(iv) preferential lanes and tolls for high-occupancy vehicles at toll collection points;

(v) reduced off-peak fares for public transportation;

(vi) staggered or flexible work-hour programs;

(vii) designation of bikeways not involving new construction;

(viii) park-and-ride bus services, not involving the construction or designation of additional parking capacity.

(41) (Direct action or funding). The construction and operation of park-and-ride areas and associated facilities, services and amenities, where paragraphs (5) through (8) of subdivision (d) of this section are not violated.

(42) (Direct action or funding). The construction and operation of transit transfer terminal areas, other than park-and-ride areas and terminal buildings.

(43) (Direct action). The construction, along existing highways, of bus and transit turnout bays, turning lanes and shelters.

(44) (Direct action). The implementation of the directional and tourist-oriented replacement sign program on interstate, expressway and primary highways.

(45) (Regulation making). The issuance or approval of traffic regulations.

PUBLIC TRANSIT

(46) (Direct action or funding). The establishment, operation and administration of car-pooling, van-pooling or other shared-ride programs.

(47) (Funding or permit granting). The institution and operation of new bus services or the expansion of existing services.

(48) (Permit granting; approval or denial of requests allowing). Increases or decreases in the service frequency of bus lines.

(49) (Permit granting). Approval or denial of a certificate or amendment or extension of a certificate allowing:

- (i) operation of a common carrier of property by motor vehicle;
- (ii) operation of a bus line;
- (iii) operation of a common carrier;
- (iv) operation of a contract carrier of property by motor vehicle;
- (v) operation of a contract carrier of passengers by motor vehicle;
- (vi) the operation of a common carrier of household goods by motor vehicle;
- (vii) the temporary operation as a common or contract carrier of property, household goods or passengers by motor vehicle.

RAIL

(50) (Policy making). Any resolution of a conflict between agencies as to the order of priority with respect to the exercise of a preferential right of acquisition, pursuant to section 18 of the Transportation Law.

(51) (Direct action or funding). Except for the types of projects listed below, all railroad construction, reconstruction, rehabilitation and preservation projects, and associated capital projects, within existing rail travel corridors, provided that no acquisition of real estate is involved and paragraphs (5) through (8) of subdivision (d) of this section are not violated; or, if real estate acquisition is involved, provided that none of the criteria listed in subdivision (d) of this section is violated. The following do not qualify as type II under this paragraph:

- (i) construction of new or relocation of existing railroad crossings of waterways or streams; and
- (ii) passenger terminal or station projects and automobile parking area projects.

AIRPORT

(52) (Direct action or funding). The following airport development projects:

- (i) the purchase or construction of fire/crash/rescue vehicles and buildings and other safety equipment to meet Federal airport certification requirements;
- (ii) installation of fencing;
- (iii) construction of segmented circles;
- (iv) purchase and installation of wind or landing direction indicators;
- (v) runway and taxiway marking and grooving;
- (vi) the purchase of security equipment;
- (vii) the purchase and/or construction of pedestrian and people-moving facilities and baggage-handling facilities to be located within existing airport boundaries;
- (viii) the construction of taxi fillets and jet blast facilities for existing runways, taxiways and aprons within existing airport boundaries;
- (ix) the purchase and installation of lighting systems;
- (x) the purchase of visual and electronic approach aids;
- (xi) the purchase of communication equipment;
- (xii) the purchase of weather and other atmospheric measuring equipment and/or services.

(53) (Direct action or funding). The acquisition, installation or operation of airport operational, maintenance or safety equipment for use within existing areas of operation of an existing airport, except for the establishment or relocation of instrument landing systems, approach lighting systems and runway-end identification lights.

(54) (Direct action or funding). All airport construction, reconstruction, rehabilitation and preservation projects and associated capital projects, other than terminal building and parking lot construction, within an existing airport's boundaries, provided that paragraphs (5) through (8) of subdivision (d) of this section are not violated; or, if real estate acquisition is involved, provided that none of the criteria listed in subdivision (d) of this section is violated. The following do not qualify as type II under this paragraph:

- (i) new or relocated runways;
- (ii) major runway extensions (which either expand the airport's existing boundary or a clear zone into surrounding land areas, or upgrade an existing runway to permit first-time jet aircraft usage, usage by a larger or noisier type of jet aircraft or a significant increase in the level of jet aircraft operations);
- (iii) runway strengthening that would permit first-time jet use or use by larger or noisier jet aircraft;
- (iv) the establishment or relocation of instrument landing systems, approach lighting systems and runway-end identification lights.

PORTS

(55) (Funding). The expansion, reconstruction, rehabilitation or replacement, at existing sites, of existing port and dock facilities not involving the acquisition of real estate and provided that paragraphs (5) through (8) of subdivision (d) of this section are not violated; or, if real estate acquisition is involved, provided that any expansion is less than 50 percent of existing site area or building floor area, and provided that none of the criteria listed in subdivision (d) of this section is violated.

Historical Note

Sec. filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988. Amended (d)(7)(x) and (e).

15.15 Content of DEIS's and FEIS's. (a) All draft and final EIS's shall be preceded by a cover sheet stating:

- (1) whether it is a draft or final EIS;
- (2) the name or descriptive title of the action;
- (3) the location (county and town, village or city) of the action;
- (4) the name and address of the department and the name and telephone number of a department employee who can provide further information;
- (5) the name of any individual or organization, other than the department or department employees, that prepared any portion of the statement;
- (6) the date of acceptance by the department;
- (7) in the case of a DEIS, the date by which comments must be submitted.

(b) A DEIS or FEIS shall have a table of contents following the cover sheet and a precise summary which adequately and accurately summarizes the statement.

(c) The body of all DEIS's and FEIS's shall at least contain the following:

- (1) a concise description of the proposed action, its purpose, public need and benefits, including social and economic considerations;
- (2) a concise description of the environmental setting of the areas to be affected, sufficient to understand the effects of the proposed action and alternatives;
- (3) a statement and evaluation of the environmental impacts of the proposed action, including reasonably related short- and long-term effects, cumulative effects and other associated environmental effects;

(4) an identification and brief discussion of any adverse environmental impacts which cannot be avoided or adequately mitigated if the proposed action is implemented;

(5) a description and evaluation of the range of reasonable alternatives to the action which are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no-action alternative and may include, as appropriate, alternative:

- (i) sites;
- (ii) technology;
- (iii) scale or magnitude;
- (iv) design;
- (v) timing;
- (vi) use; and
- (vii) types of actions.

For private applicants, any alternative for which no discretionary approvals are needed may be described. Site alternatives may be limited to parcels owned by, or under option to, a private applicant;

(6) an identification of any irreversible and irretrievable commitments of resources which would be associated with the proposed action should it be implemented;

(7) a description of mitigation measures to minimize the adverse environmental impacts;

(8) a description of any growth-inducing aspects of the proposed action, if applicable and significant;

(9) a discussion of the effects of the proposed action on the use and conservation of energy, if applicable and significant;

(10) for State agency actions in the coastal area:

(i) when the action is not in an approved local waterfront revitalization program area, an identification of the applicable coastal policies of Executive Law, article 42, as contained in 19 NYCRR 600.5, and a discussion of the effects of the proposed action on, and their consistency with, such policies;

(ii) when the action is in an approved local waterfront revitalization program area and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, an identification of the applicable policies of the local program and a discussion of the effects of the proposed action on such policies;

(11) a list of any underlying studies, reports and other information obtained and considered in preparing the statement; and

(12) if information about reasonably foreseeable catastrophic impacts to the environment is unavailable because the cost to obtain it is exorbitant, or the means to obtain it are unknown, or there is uncertainty about its validity, and such information is essential to any agency's SEQRA findings, the EIS must:

- (i) identify the nature and relevance of unavailable or uncertain information;

(ii) provide a summary of existing credible scientific evidence, if available; and

(iii) assess the likelihood of occurrence, even if the probability of occurrence is low, and the consequences of the potential impact, using theoretical approaches or research methods generally accepted in the scientific community.

This analysis would likely occur in the review of such actions as an oil supertanker port, a liquid propane gas/liquid natural gas facility, or the siting of a hazardous waste treatment facility. It should not apply in the review of such actions as shopping malls, residential subdivisions or office facilities.

(d) A DEIS or FEIS may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced documents shall be made available for inspection by the public, within the time period for public comment, in the same places where the department makes available copies of the referencing document. When a DEIS or FEIS incorporates by reference, it shall contain a brief description of the referenced document, its applicable findings in summarized form and the date of its preparation.

(e) An FEIS must consist of: the DEIS, including any revisions or supplements to it; copies or a summary of the substantive comments received; an indication of the source of each comment received; and the department's response to each substantive comment. The DEIS may be directly incorporated into the FEIS or may be incorporated by reference. The department is responsible for the adequacy and accuracy of the FEIS, whether prepared by the department or by an applicant. All revisions and supplements to the DEIS shall be specifically identified as such in the FEIS.

(f) A generic impact statement may be used to assess the environmental effects of separate actions having generic or common impacts. These statements and the record of decision based thereon should set forth specific conditions or criteria under which individual actions will be undertaken or approved. When an individual action is proposed by the department, which is encompassed within such a generic impact statement and which will be carried out in conformance with the conditions and criteria determined in the generic FEIS and its record of decision, there is no further obligation under this Part.

Historical Note

Sec. filed April 6, 1979; amd. filed Dec. 18, 1987 eff. Jan. 6, 1988. Amended (b)-(f).

15.16 Fees. (a) Where the department is the lead agency for an applicant, the department may charge a fee to the applicant for the preparation or review of the DEIS and the preparation of the FEIS. The fee charged shall be the entire cost to the department of such preparation or review. The costs shall include personal services of department employees computed at an hourly rate, fringe benefits attributable to such personal services, overhead attributable to such personal services, plus any other costs attributable to impact statement preparation or review. In no event shall the fee for impact statement preparation or review exceed any limit contained in 6 NYCRR 617.17.

(b) When a dispute arises concerning fees charged to an applicant by the department, the applicant may make written request to the assistant commissioner for management and finance for review of the fee charged. Upon receipt of such request, the assistant commissioner for management and finance, or his designee, shall review such fees charged and prepare a written response to the applicant setting forth the reasons why such fees are valid or invalid.

Historical Note

Sec. filed April 6, 1979 eff. April 15, 1979.

§ 15.17

TITLE 17 TRANSPORTATION

15.17 Flow charts. (a) *Figure 1.*

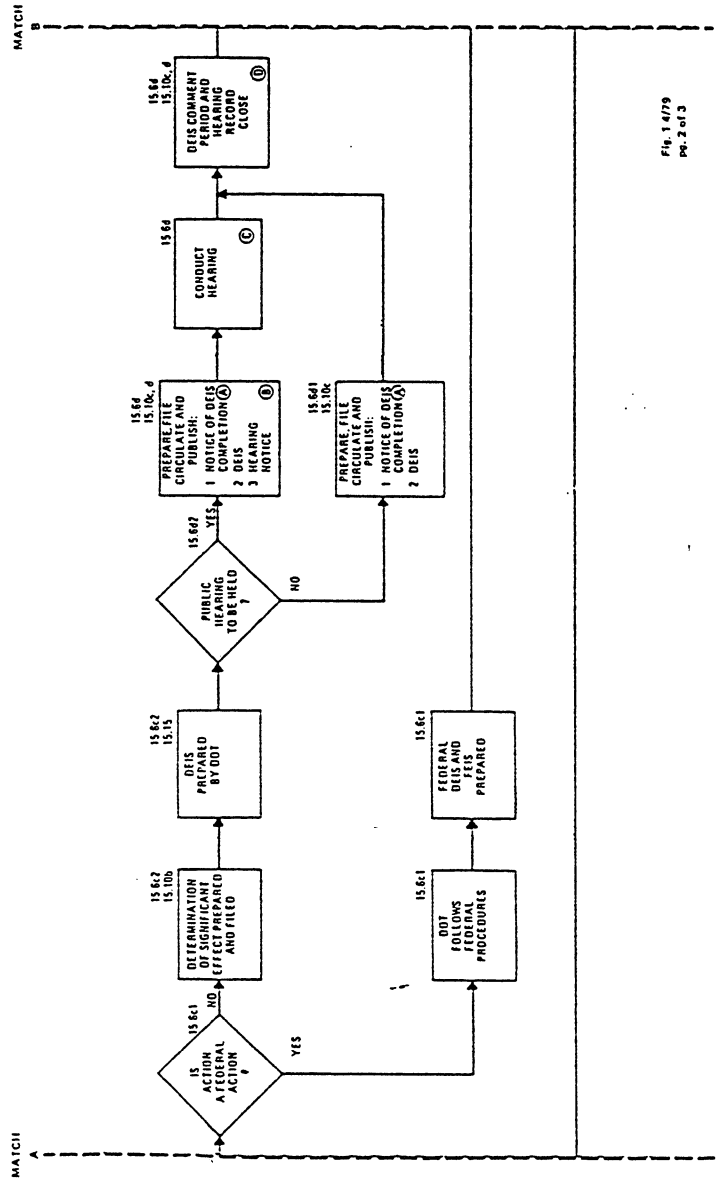


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pg. 2 of 3

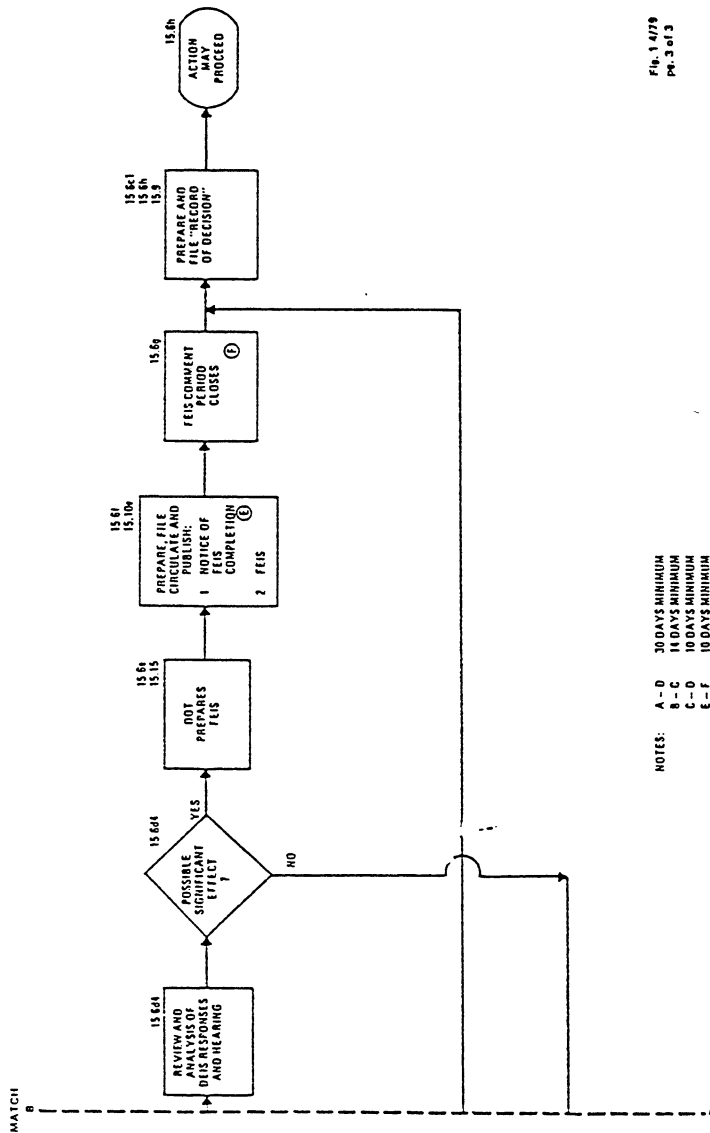
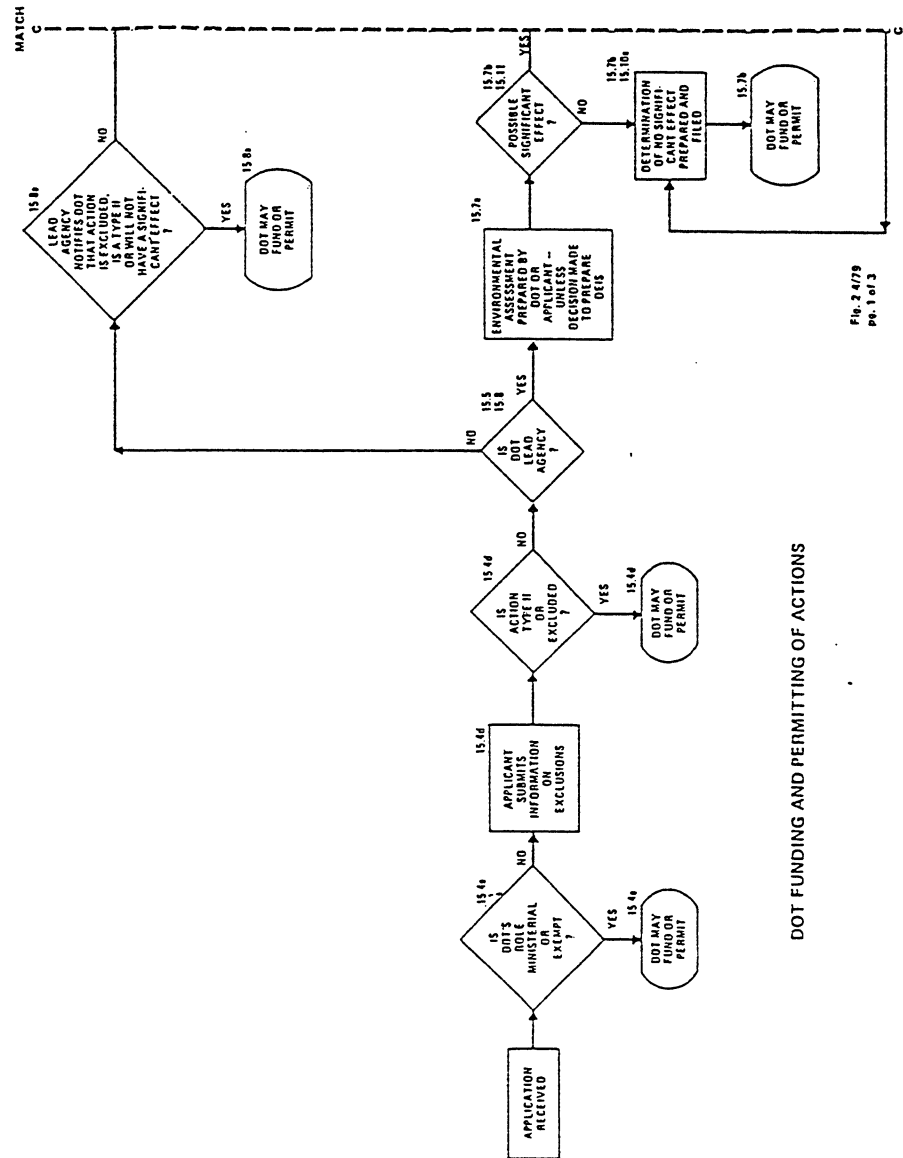


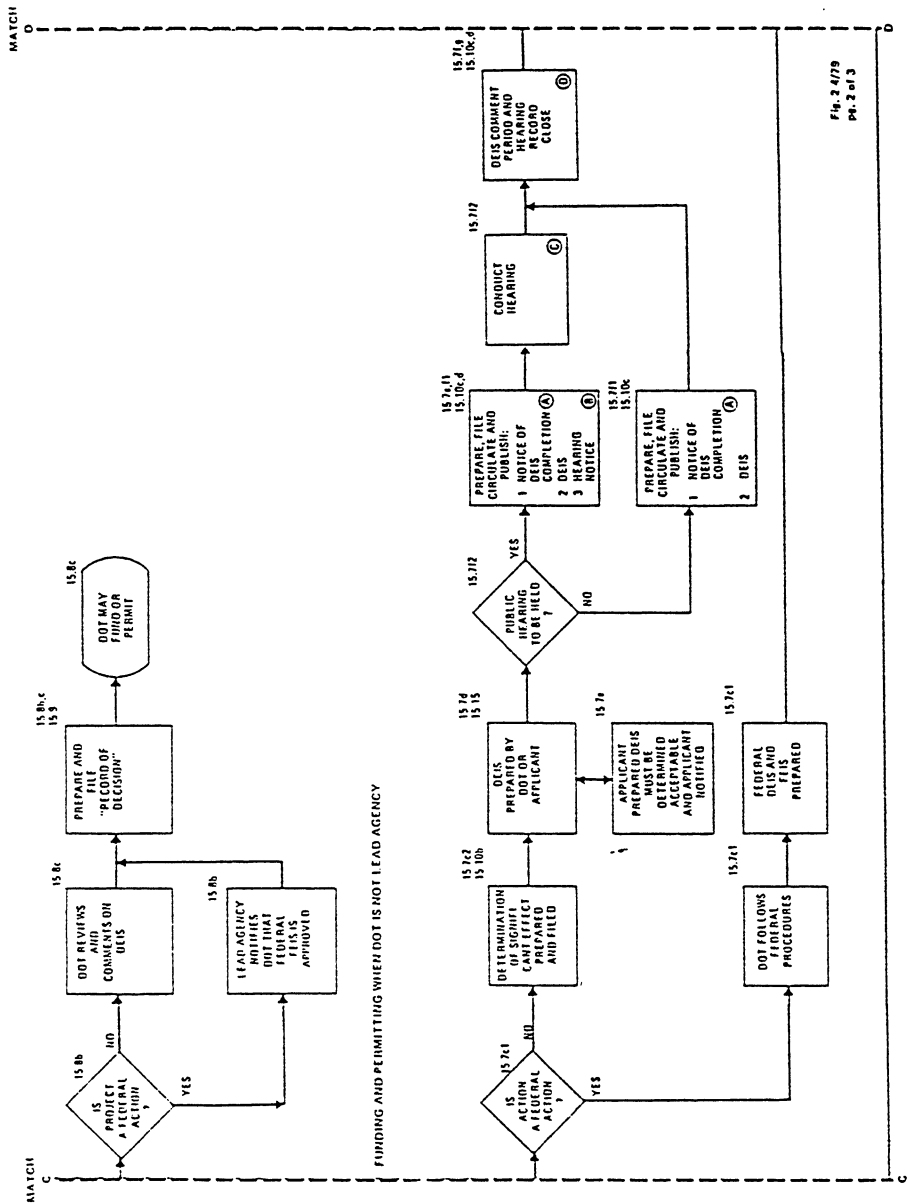
FIG. 14/79
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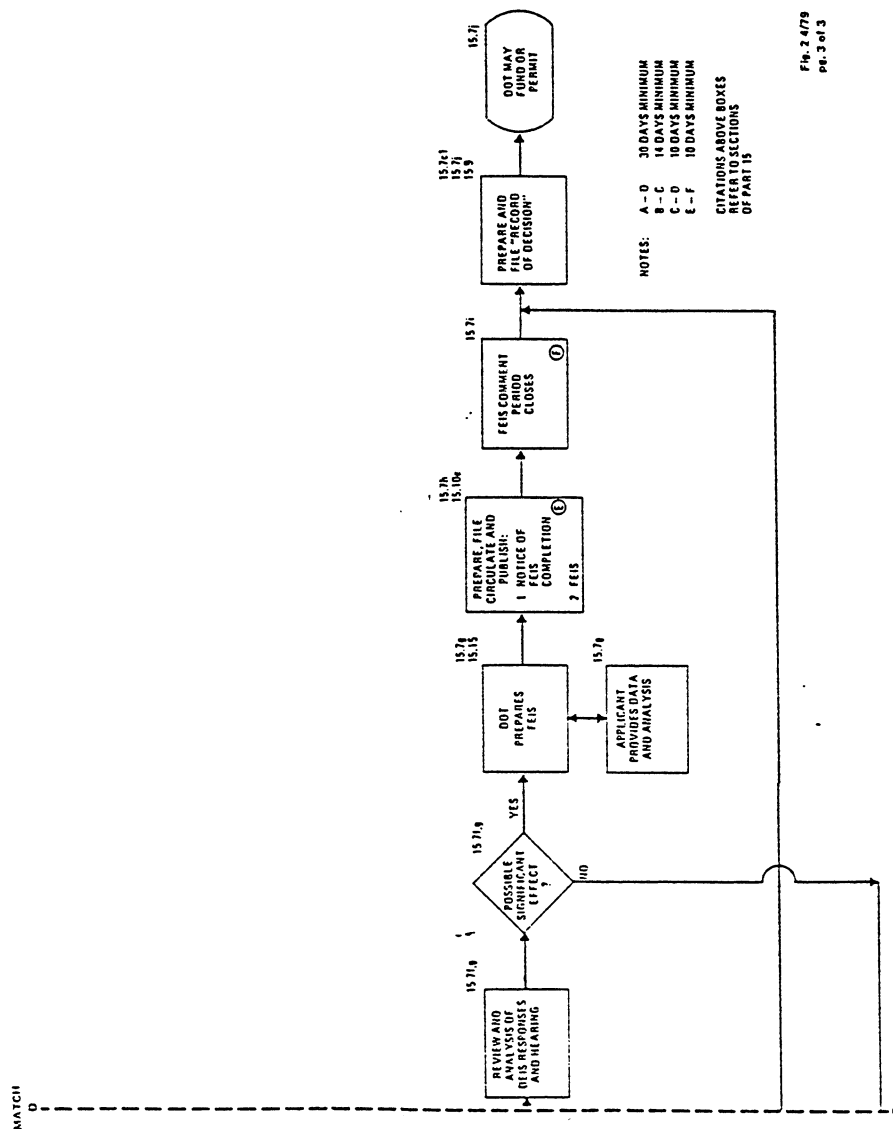
NOTES:
A - D 30 DAYS MINIMUM
B - C 14 DAYS MINIMUM
C - D 10 DAYS MINIMUM
E - F 10 DAYS MINIMUM
CITATIONS ABOVE BOXES
REFER TO SECTIONS
OF PART 15

(b) Figure 2.



DOT FUNDING AND PERMITTING OF ACTIONS





Historical Note

Sec. filed April 6, 1979 eff. April 15, 1979.

§ 16.1

TITLE 17 TRANSPORTATION

PART 16

Historical Note

Part (§§ 16.1-16.3) filed May 16, 1966;
repealed, filed March 29, 1974 eff. April 1, 1974.

Sections 16.1-16.3

Historical Note

Secs. filed May 16, 1966; repealed, filed March
29, 1974 eff. April 1, 1974.